IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2024] SGHC 97

Tax Appeal No 5 of 2022 and Summons No 2250 of 2022

Between

THM International Import &
Export Pte Ltd

… *Appellant*

And

Comptroller of Goods and
Services Tax

… *Respondent*

JUDGMENT

[Revenue Law — Goods and Services Tax (GST) — Appeals — Scope of appeal from decision of GST Board of Review]
[Revenue Law — Goods and Services Tax (GST) — Appeals — Appeal on "question of law" and "question of mixed law and fact"]
[Revenue Law — Goods and Services Tax (GST) — Appeals — Whether appeal on fact or law]

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THM International Import & Export Pte Ltd
v
Comptroller of Goods and Services Tax

[2024] SGHC 97

General Division of the High Court — Tax Appeal No 5 of 2022 and Summons No 2250 of 2022
Aedit Abdullah J
8 February 2024

5 April 2024 Judgment reserved.

Aedit Abdullah J:

1 The Appellant appeals against the decision of the Goods and Services Tax Board of Review ("the Board"), which found on the facts that there was no supply of goods upon which the Appellant had sought input tax refunds. Having considered the parties' arguments, the appeal is dismissed. The primary basis of this appeal was the Appellant's dissatisfaction with the Board's findings of fact; it is clear that the court's role in such appeals is a limited one, as the court generally does not have the jurisdiction to hear appeals on findings of fact by the Board.

Background facts and the decision of the Board

2 The Appellant purportedly acquired "Osperia" Micro Secure Digital Cards and "Osperia" flash drives (collectively, "the Goods") from its supplier,

[K], which the Appellant then exported to two Malaysian customers [EXT] and [ETM].

3 The Appellant claimed S$1,341,557.00 in input tax refunds from the Respondent, the Comptroller of Goods and Services Tax, for these supplies of the Goods, which allegedly took place during the period between 1 April 2016 to 31 August 2016. These claims were rejected by the Respondent on the basis that it was not satisfied that there had been a supply, and that these had not been genuine transactions.

4 The Appellant appealed the Respondent's decision to the Board. In its judgment reported at *GHY v The Comptroller of Goods and Services Tax* [2023] SGGST 1 (the "Judgment"), the Board upheld the Respondent's determination that there had been no supply of the Goods. Its reasons can be summarised as follows:

(a) Under s 52(3) of the Goods and Services Tax Act 1993 (2020 Rev Ed) ("the GST Act"), the burden of proof lay on the Appellant to prove that the Respondent's decision to disallow its input tax claim was wrong (Judgment at [53]). It was therefore incumbent on the Appellant to tender satisfactory evidence to convince the Board on a balance of probabilities that the Goods had indeed been purchased and exported by the Appellant (Judgment at [59]).

(b) As a starting point, the Appellant had provided *prima facie* evidence that the transactions were genuine, as there were (a) documentary evidence purportedly showing the receipt and on-sale of the Goods; (b) oral testimony from representatives of the Appellant and [K] that the Goods had been supplied to the Appellant; and (c) oral

testimony from the Appellant's representatives that they had kept photographic evidence of the existence of the Goods (Judgment at [60]).

(c) Given that the Appellant had provided *prima facie* evidence of the supply of the Goods, the evidential burden shifted to the Respondent to convince the Board that it should not accept the Appellant's evidence (Judgment at [61]). In this regard, the Respondent led evidence from [O] – the purported manufacturer of the Goods – and [S] – an upstream supplier of the Goods to [K] – whom the Respondent had identified as part of the Appellant's supply chain in its investigations. Their evidence strongly suggested that they could not have manufactured or supplied the Goods (Judgment at [27]). For example, both [O] and [S] confirmed that they had never seen the Goods, nor were they in any business relating to the manufacturing or trading of electronic products such as the Goods (Judgment at [14], [20]–[21] and [23]).

(d) Having regard to the evidence before it, the Board concluded that the Respondent had raised various red flags that cast serious doubt on the veracity of the transactions (Judgment at [61]). This meant that the evidential burden shifted back to the Appellant to do more to respond to the doubts raised by the Respondent and convince the Board that the transactions were indeed genuine. The Board concluded that the Appellant had failed to do so (Judgment at [62] and [67]).

The parties' cases

The Appellant's arguments

5 The Appellant submits that the appeal should be allowed on three grounds.

6 First, the Appellant submits that the Board erred by taking into consideration events higher up in the supply chain in determining whether there was a supply of the Goods in relation to the Appellant.[1] In this connection, the Appellant contends that, by taking into account allegedly suspicious circumstances upstream, the Board had in substance prospectively, and thus erroneously, applied provisions that were subsequently introduced into the GST Act (long after the alleged supplies had occurred) to disallow input tax claims by taxable persons with actual or constructive knowledge that the supply was part of a fraudulent scheme to cause loss of public revenue.[2] As these provisions were inapplicable to the present case, there was no legal basis for the Board to deny the Appellant's input tax claim on the basis of its alleged constructive knowledge of the fraudulent scheme.

7 Second, the Appellant also submits that the Board erred in its assessment of evidence by failing to prefer the Appellant's direct evidence on the existence and supply of the Goods over the circumstantial evidence led by the Respondent on the various red flags surrounding the supply of the Goods.[3]

8 Third, the Appellant submits that the Board erred in its application of the burden of proof. Specifically, the Board imposed on the Appellant an insurmountable burden by requiring the Appellant to give evidence pertaining to facts over and beyond what it had actual knowledge of. Such facts included the identities of the missing personalities and the information on the origin of

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1 Appellant's Written Submissions dated 12 December 2023 ("AWS") at paras 11(a) and 26–30.

2 AWS at para 32.

3 AWS at paras 11(b) and 39–53.

the Goods.[4] In this regard, the Appellant relies on s 108 of the Evidence Act 1893 (2020 Rev Ed) ("the EA"), which it claims ought to apply in this case to absolve it of the burden of proving matters outside of its knowledge.[5]

The Respondent's arguments

9 The Respondent submits that the appeal should be dismissed.

10 First, the Respondent argues that the Board did not err in law by finding that there was no actual supply of the Goods. The Comptroller and the Board must always satisfy themselves that an alleged supply of goods upon which an input tax claim is made does in fact exist.[6] Thus, the Board had the legal standing to make a finding as to the non-existence of the supply of the Goods and deny the Appellant's tax refund claim on that basis. Contrary to the Appellant's suggestion (at [6] above), the Board did not, and did not need to, rely on the knowledge-based approach under the new provisions of the GST Act to deny the Appellant's input tax claim.[7]

11 Second, the Respondent contends that the Board's finding that there were no actual supplies of the Goods was a finding of fact, which generally falls outside the scope of appeals to the High Court under s 54(2) of the GST Act.[8]

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4 AWS at paras 59–65.

5 AWS at paras 11(c) and 54–66.

6 Respondent's Written Submissions dated 9 January 2024 ("RWS") at paras 53–54.

7 RWS at para 60.

8 RWS at paras 34–35.

12 Third, on the merits of the appeal, the Respondent submits that the Board was correct to find on the evidence that the supplies did not exist.[9]

13 Fourth, the Respondent refutes the Appellant's claim that the Board had erred in its application of the burden of proof. The Respondent submits that s 108 of the EA does not apply in this case because, amongst other reasons, the Board was not a party to the transactions and the Appellant could have known of the missing personalities and the origins of the Goods had it done proper due diligence. Further, the Board was correct in identifying the deficiencies in the Appellant's evidence relating to the genuineness of the transactions in its finding that the Appellant had failed to discharge its burden of proof.[10]

The decision

14 In my judgment, this appeal fails for the single reason that the Appellant has done nothing but to attack the factual findings of the Board, namely, its assessment of the evidence before it and its ultimate finding that there had been no supply of the Goods. Save for a very limited exception, no appeal to the High Court lies from findings of fact by the Board. The Appellant has not demonstrated that it comes within this exception.

The limited role of the High Court in an appeal from the Board

There is generally no right of appeal from the findings of fact of the Board

15 The GST Act itself makes clear that the permissible scope of appeal to the High Court against decisions of the Board is a narrow one. Under s 54(1) of

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9 RWS at paras 64–74.

10 RWS at paras 75–83.

the GST Act, "the decision of the Board is final", save for the right of appeal stated in s 54(2). This right of appeal is not an unfettered one. Apart from a *de minimis* threshold that the appeal must relate to an amount due or payable to the appellant of at least S$500, the right of appeal is only in respect of "any question of law or of mixed law and fact" (see s 54(2) of the GST Act).

16 There is no right of appeal in respect of questions or issues of fact. It is clear that s 54(2) is exhaustive of the scope of appeal to the High Court against decisions of the Board. The import of this is that the legislature has determined the Board to be the sole decision-maker in respect of issues of fact, and that appeals on questions of fact alone are not permitted (see the High Court decision in *NP and another v Comptroller of Income Tax* [2007] 4 SLR(R) 599 at [6]).

17 This represents the legislature's attempt to distribute decision-making power and responsibility as between two decision-makers (here the court and the Board) (see Timothy Endicott, "Questions of Law" (1998) 114 LQR 292 ("*Questions of Law*") at 315). The rationale for this was explained by Lord Radcliffe in the well-known House of Lords decision in *Edwards (Inspector of Taxes) v Bairstow and another* [1956] AC 14 in the following terms (at 38–39):

> As I see it, the reason why the courts do not interfere with commissioners' findings or determinations when they really do involve nothing but questions of fact is not any supposed advantage in the commissioners of greater experience in matters of business or any other matters. The reason is simply that by the system that has been set up the commissioners are the first tribunal to try an appeal, and in the interests of the efficient administration of justice their decisions can only be upset on appeal if they have been positively wrong in law. The court is not a second opinion, where there is reasonable ground for the first. But there is no reason to make a mystery about the subjects that commissioners deal with or to invite the courts to impose any exceptional restraints upon themselves because they are dealing with cases that arise out of facts found by commissioners.

18 This statement was cited with approval by the Court of Appeal in *ZF v Comptroller of Income Tax* [2011] 1 SLR 1044 (at [67]). Although Lord Radcliffe in this statement downplayed considerations of institutional competence as the rationale for the legislature's allocation of decision-making power, this point has risen to prominence in more recent English jurisprudence. For example, in *Commissioners for Her Majesty's Revenue & Customs v Procter & Gamble UK* [2009] EWCA Civ 407 ("*Procter*"), in the context of an appeal from a decision of the VAT and Duties Tribunal, Jacob LJ cautioned that (at [11]):

> It is also important to bear in mind that this case is concerned with an appeal from a specialist Tribunal. Particular deference is to be given to such Tribunals for Parliament has entrusted them, with all their specialist experience, to be the primary decision maker …

19 The same point was also made by Toulson LJ (*Procter* at [48]). Both their Lordships referred to the following observations of Baroness Hale of Richmond in the House of Lords' decision in *AH and others (Sudan) v Secretary of State for the Home Department (United Nations High Commissioner for Refugees intervening)* [2008] 1 AC 678, in the context of an appeal from a decision of the Asylum and Immigration Tribunal (at [30]):

> This is an expert tribunal charged with administering a complex area of law in challenging circumstances. To paraphrase a view I have expressed about such expert tribunals in another context, the ordinary courts should approach appeals from them with an appropriate degree of caution; it is probable that in understanding and applying the law in their specialised field the tribunal will have got it right. They and they alone are the judges of the facts. It is not enough that their decision on those facts may seem harsh to people who have not heard and read the evidence and arguments which they have heard and read. Their decisions should be respected unless it is quite clear that they have misdirected themselves in law. Appellate courts should not rush to find such misdirections simply because they

> might have reached a different conclusion on the facts or expressed themselves differently.
>
> [internal citations omitted]

20 I respectfully agree with these observations. However one wishes to cast the underlying rationale for the circumscription of the court's appellate jurisdiction, the fact of the matter is that this circumscription exists. It is not for the court to arrogate to itself decision-making power that the legislature has deliberately withheld.

21 As noted by the Respondent,[11] only a limited exception has been recognised in *Comptroller of Goods and Services Tax v Dynamac Enterprise* [2022] 5 SLR 442 ("*Dynamac*"), allowing curial intervention in respect of a finding of fact by the Board if it is one that no reasonable body of members constituting a board of review could have reached (at [17]). The basis of this was the Court of Appeal's observations in *Comptroller of Income Tax v AQQ and another appeal* [2014] 2 SLR 847 (at [123]):

> … when the court considers an appeal from the Board on a finding of fact, the question that the court asks itself is whether "no reasonable body of members constituting an Income Tax Review Board could have reached the findings reached by the Board" (*per* Chan Sek Keong JC, as he then was, in *Mount Elizabeth (Pte) Ltd v Comptroller of Income Tax* [1985-1986] SLR(R) 950 at [17]). The court therefore quite correctly extends deference to the Board where findings of facts are concerned notwithstanding the availability of an appeal.

The issue there was the appropriate standard of review over the discretion exercised by the Comptroller of Income Tax under s 33(1) of the Income Tax Act to disregard or vary a tax arrangement. Given that was the scope of the Court of Appeal's observations, it may be asked, with respect, whether those

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11 RWS at para 35.

observations are a sufficient basis for the exception recognised in *Dynamac*. But that is perhaps a question for another day, and I am content to accept the *Dynamac* exception in the present case.

The distinction between fact, law and mixed law and fact

22 It is well-known that the distinction between a question of fact and a question of law can be elusive (see *Collector of Customs v Pozzolanic Enterprise Pty Ltd* (1993) 115 ALR 1 at 9); still less when one comes to the question of mixed law and fact. As Allsop J observed in the Federal Court of Australia's decision in *Barghouthi v ING Custodians Pty Ltd* [2003] FCA 1272, "one should not overlook the difficulty, at times, of distinguishing between errors of law and errors of fact and of understanding the place of what are sometimes called questions of mixed fact and law" (at [27]).

23 However, as a general matter, I find the following distinction between these categories drawn by Iacobucci J in the Supreme Court of Canada's decision in *Canada (Director of Investigation and Research, Competition Act) v Southam Inc* [1997] 1 SCR 748 ("*Canada*") to be instructive (at [35]):

> Briefly stated, questions of law are questions about what the correct legal test is; questions of fact are questions about what actually took place between the parties; and questions of mixed law and fact are questions about whether the facts satisfy the legal tests.

In sum, questions of law relate to the content of the law; questions of fact relate to the happenings between the parties that form the context of their dispute; and questions of mixed law and fact concern the application of the law to the facts.

24 I note that sceptical views have been expressed as to the utility of the fact-law distinction. In *Moyna v Secretary of State for Work and Pensions*

[2003] 1 WLR 1929, Lord Hoffmann remarked that "there are two kinds of questions of fact: there are questions of fact; and there are questions of law as to which lawyers have decided that it would be inexpedient for an appellate tribunal to have to form an independent judgment" (at [27]). His Lordship subsequently elaborated on this in *Lawson v Serco Ltd* [2006] UKHL 3, where he said that the classification of something as either "fact" or "law" turns "upon whether as a matter of policy one thinks that it is a decision which an appellate body with jurisdiction limited to errors of law should be able to review" (at [34]).

25 In a similar vein, doubts have also been cast on the usefulness of the category of "mixed fact and law". For example, Prof Endicott has criticised this hybrid concept as (see *Questions of Law* at 300):

> … one of the baffling gadgets in the judicial toolbox … The notion has crept into the statute books, though only as part of an extravagant device for creating the power to hear appeals on any question. The nature of the mixture is unexplained, and it seems that "mixture" is actually a rather unhelpful low-voltage metaphor: a question of application does not *mix* fact and law, it asks the decision-maker to apply the law *to* the facts.
>
> [emphasis in original]

From this perspective, a question of application of law to facts would simply be a question of law rather than a question of mixed law and fact (see *Questions of Law* at 305–306). There is some judicial support for this view, such as the High Court of Australia's decision in *Vetter v Lake Macquarie City Council* (2001) 202 CLR 439, where the court said that "[w]hether facts as found answer a statutory description or satisfy statutory criteria will very frequently be exclusively a question of law" (at [24]).

26 Interesting as these points may be on a jurisprudential level, it is neither necessary nor appropriate to attempt to resolve them because the statutory language here does employ the tripartite distinction. The court and the parties before it must adhere to it. For this purpose, I find that the distinction drawn in the *Canada* case appropriately fleshes out the conceptual differences between the three categories (see [23] above). However, I accept that, in practice and application, the differences would appear less categorical and to be more of degree than kind. But this is something that is inherently cast at a high degree of abstraction. Ultimately, each case (and issue raised therein) must be considered in its own context, and the court would have to make a value judgment as to which of the three categories a particular dispute, issue or question falls within.

The Appellant's appeal only raises questions of fact

27 Turning to the Appellant's substantive appeal, it is clear to my mind that the Appellant has done nothing but to raise what are in substance challenges to the Board's factual finding that there had been no supply of the Goods. Such challenges generally fall outside the appellate jurisdiction of the High Court under s 54(2) of the GST Act.

No question of law is raised

28 Although the Appellant has attempted to dress up its contentions on fact as errors of law, the court focuses on the substance rather than form. The Appellant's contentions do not succeed.

29 The Appellant firstly argues that the Board had prospectively applied provisions found in the current GST Act – then not yet in force – to disallow the

Appellant's input tax claims on the basis that the Appellant had actual or constructive knowledge that the supply to him was part of a fraudulent scheme. The Appellant submits that the prevailing legal position at the time of the purported supply of the Goods was that:[12]

> … where a supply of goods tainted with [missing trader fraud] is carried on by upstream suppliers or downstream customers, the GST-registered person should not be made to bear any consequences arising therefrom.

Thus, in taking into account the suspicious circumstances upstream *vis-à-vis* [O] and [S] to find that there was no supply of Goods made to or by the Appellant, the Board supposedly erred in law.

30 I do not accept this submission. In my judgment, the Appellant has mischaracterised the Board's reasoning and attempts to characterise a pure finding of fact as a legal determination. The Board did not deny the Appellant's input tax claim on the basis of its constructive knowledge of fraudulent activity conducted upstream, as the amended law would now allow. Rather, what the Board did was to infer from, amongst others, an inability to trace the Goods to the putative manufacturer ([O]) and the supplier of [K] ([S]) that the Goods did not exist (Judgment at [61(b)]). This is clear from the Board's statement that it found it "quite incredible that $19.7 million of Osperia goods had materialised seemingly from thin air, beyond the knowledge of the Appellant or [K]" (Judgment at [63]). Other than the dubious provenance of the Goods, the following circumstances were also considered in drawing the inference that the Goods did not exist: that the Goods were not known or traded in the market despite the high transaction volumes in this case (Judgment at [61(c)]); the lack

12 AWS at para 29.

of a business rationale behind the transactions whereby the Appellant would earn a profit in a risk-free arrangement (Judgment at [61(d)]); and the elusive nature of the downstream customers (Judgment at [61(e)]).

31 As the Respondent alludes to, there is a difference between finding that a supply existed but disallowing an input tax claim on the basis that it was tainted by fraud, and finding that there was no supply to begin with such that the requirements for an input tax claim were not met.[13] The Board did not apply any law that was not then in force; it drew a factual inference on the non-existence of the Goods from the dubious circumstances noted above at [30]. To my mind, this was an entirely logical inference that the Board was entitled to draw. More importantly, this was clearly a finding of fact that does not implicate the law at all.

32 To the extent that the Appellant may go as far as to suggest that the law in force at the time required the Board to shut its eyes to anything occurring upstream or downstream of the Appellant's supply chain altogether, that is too broad, and I would be surprised if any case took such an approach. In so far as it might be relevant at all to our law, I do not read the European Court of Justice's decision in *Optigen Ltd and others v Customs and Excise Commissioners* [2006] Ch 218 ("*Optigen*") as support for a proposition of such breadth. The Appellant relies[14] on the following statement by the court (at [52]):

> Nor can the right to deduct input VAT of a taxable person who carries out such transactions be affected by the fact that, in the chain of supply of which those transactions form part, another prior or subsequent transaction is vitiated by VAT fraud,

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13 RWS at para 57.

14 AWS at para 27.

> without that taxable person knowing or having any means of knowing.

33 This statement was made on the assumption that the right to deduct input VAT had already accrued. Specifically, the court was making the point that an accrued right of VAT – which assumes the established existence of a supply – could not be defeated by the fraud of other persons in the supply chain. It is in this context that the court's finding that "each transaction must therefore be regarded on its own merits and the character of a particular transaction in the chain cannot be altered by earlier or subsequent events" must be read (see *Optigen* at [47]). Put differently, in *Optigen*, the factual occurrence of the transactions was not in doubt. *Optigen* therefore provides no assistance to the Appellant where, as in the present case, it is the occurrence of the supply of the Goods – and in turn, the accrual of the right to an input tax refund – that is in issue.

34 Secondly, the Appellant argues that the Board had applied the burden of proof in a legally erroneous manner. The Appellant takes issue[15] with the following observation by the Board on the deficiencies in the evidence led by the Appellant (see Judgment at [62]):

> Had the transactions been genuine, it would clearly have been in the Appellant's power to provide further proof to close the gaps raised. For example, the Appellant could have traced and produced some of the missing personalities in this case, including the persons who offered the arrangement to [D], the person known as Jacky who allegedly represented the Customers, as well as any of the true controlling minds behind [O] and/or [S]. The Appellant could have also provided further evidence of communications between the parties apart from purchase and export, for example, aftersales support or warranty issues, which would surely have arisen given the volume of transactions involved. The Appellant's response to

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15 AWS at para 59.

> the Comptroller's evidence is that it has no duty to perform due diligence under the tax regime. While that would be true in the usual case, where the Comptroller has cast sufficient doubt on the veracity of the transactions, the Appellant does itself no favours if it does not find alternative ways to bolster its assertion that the transactions were genuine.

The Appellant submits that this entailed the Board requiring the Appellant to establish facts outside its knowledge, in apparent derogation of s 108 of the EA, which provides that "[w]hen any fact is especially within the knowledge of any person, the burden of proving that fact is upon that person".[16]

35 I reject this submission. First, the Appellant's interpretation on the effect of s 108 of the EA is misconceived. It does not follow from s 108, which requires a person to prove a fact where that fact is especially within his knowledge, that a person does not have to prove a fact simply because it is not in his knowledge. The Appellant's reading of s 108 turns it from a limited inclusionary provision into a broad exclusionary one.

36 Second, I do not see how the Board's comments impose an insurmountable burden on the Appellant as the Appellant claims. The source of the Goods supplied to the Appellant and the evidence of the parties' communications apart from purchase and export were clearly something within the knowledge of the Appellant rather than the Respondent. If anything, the effect of s 108 of the EA would be to place the burden of proof on the Appellant to establish the source of the Goods and the genuineness of the transactions. Indeed, this is already the law by virtue of s 52(3) of the GST Act which lays the burden at the feet of the Appellant to establish that the Respondent's determination was erroneous. As the Board observed, the burden is placed on

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[16] AWS at paras 56–58.

the taxpayer because the taxpayer is more acquainted with his own affairs than the taxman, who is "not privy to the contemporaneous circumstances or details behind the purported transactions" (see Judgment at [54] and [58]).

37 Third, it seems to me that the Appellant has also misunderstood the Board's reasoning. This is evident in the following submission:[17]

> As the [Board] has held that the Appellant had discharged its evidential burden of proof by showing that the Goods were supplied, the Respondent must adduce relevant evidence to establish facts within its knowledge to support its position that the Goods were not supplied. As there is no explanation from the Respondent or any other conflicting evidence produced from the Respondent refuting the Appellant's claim that the Goods pictured in its photographs were supplied, the Appellant's input tax claim ought to be allowed.

38 The Appellant's claim that the Board had found that the Appellant had discharged its evidential burden is patently false. It is true that the Board did find that the Appellant had discharged its initial evidential burden of showing that the transactions were *prima facie* genuine (Judgment at [60]). But crucially, the Board went on to find that the Respondent had discharged its evidential burden of establishing why the Appellant's evidence should be rejected, by casting sufficient doubt on the purported supply of the Goods (Judgment at [61]). Hence, the evidential burden shifted back to the Appellant (Judgment at [62]). It was exactly because the Appellant had failed to discharge this subsequent evidential burden that the Board held that the Appellant ultimately failed to discharge its legal burden to prove that the Respondent's determination was wrong (Judgment at [67]). It appears that the Appellant has conflated the evidential or tactical burden, which shifts based on the state of the evidence before the court, with the legal burden of proof, which never shifts. Indeed, it is

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17 AWS at para 66.

erroneous to speak in terms of an "evidential burden of proof" since the evidential burden is strictly not a burden of proof *per se* (see the Court of Appeal decision in *SCT Technologies Pte Ltd v Western Copper Co Ltd* [2016] 1 SLR 1471 at [17]–[19]).

39 Finally, the principal difficulty with the Appellant's submission is that the issue of whether one party's evidential burden is discharged is an issue of fact, not law. A party who fails to discharge its evidential burden fails to prove the fact(s) that he asserts. Thus, the Board's finding that the Appellant did not discharge its evidential burden was a finding that the Appellant failed to prove the fact it asserted – *ie*, that the supply of Goods was genuine – due to insufficiency of evidence. Even if the Board did err in assessing that there was an insufficiency of evidence from the Appellant, that would be an error of fact outside the scope of s 54(2) of the GST Act. The Board does not err in law in respect of the burden of proof simply because it finds that one party failed to discharge its burden of proof. It would make nonsense of the legislative purpose underlying the general proscription against appeals on fact if every finding of fact based on an insufficiency of evidence could be recharacterised into a question of law in this way.

The substance of the appeal concerns findings of fact

40 Looking at the Appellant's case in the round, it is abundantly clear that this appeal is an appeal on fact disguised as an appeal of law or mixed law and fact. There is, in substance, no dispute on the content of the applicable law – such as to give rise to a question of law – or the application of law to the established facts – such as to give rise to a question of mixed law and fact. To illustrate, there might have been an issue of law or mixed law and fact if there was a dispute as to the legal definition of "supply", or as to whether a particular

form of supply – say, a supply of content in the virtual world – could constitute a "supply" under the GST Act. The dispute raised by the Appellant relates to a logically anterior matter, namely, whether the Goods claimed to have been supplied existed. It would only be after this fact is established that the legal or mixed question as to whether this amounted to a "supply" within the meaning of the GST Act, and in turn, whether the Appellant had a right to an input tax refund, would arise. The issue in contention by the Appellant is quintessentially an issue of fact that is generally within the Board's exclusive jurisdiction.

41 Indeed, the Appellant has effectively conceded as such in its written submissions, which contain a header titled, "The Respondent's evidence has not contradicted or explained away the Appellant's evidence",[18] that then splits into the following two sub-headers:

(a) "On the Circumstantial Evidence Issue, the [Board] failed to assess the evidence in totality and should have accorded more weight to the Appellant's direct evidence, which demonstrates that the supplies took place";[19] and

(b) "The Appellant's direct evidence demonstrates the very supply in question and remains unrebutted by the Respondent's circumstantial evidence".[20]

42 It is self-evident that these are objections to the Board's assessment of evidence, and therefore pure questions of fact. In this regard, the Appellant has

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18 AWS at p 19.

19 AWS at p 19.

20 AWS at p 22.

come nowhere close to demonstrating that the Board's assessment of the evidence was so outrageously in defiance of logic that no reasonable body of members constituting a Goods and Services Tax Board of Review could have arrived at the same landing. It was for the Board to weigh the evidence and find that the evidence of the Appellant, even if direct, was wanting, and to prefer the evidence put forward by the Respondent, even if circumstantial. I see nothing in the Judgment that suggests that the Board fell off the rails in any way. In contrast, the Board's conclusion appears to be sound and founded on solid reasons.

43 Given this, the Appellant does not come within the limited exception for appeals on fact recognised in *Dynamac* (see [21] above). I stress that I make no definitive finding as to the correctness of the Board's assessment of the evidence; whether or not I agree with the Board is immaterial, as the statutory regime deems my opinion on the merits of the Board's factual findings to be irrelevant.

Conclusion

44 For all these reasons, the grounds of appeal raised by the Appellant are outside the permissible scope of appeal as set out in s 54(2) of the GST Act. The appeal is thus dismissed in its entirety.

Postscript on the Respondent's preliminary objection

45 Lastly, I briefly address the preliminary objection raised by the Respondent in the form of its application to strike out the notice of appeal.[21] This was founded largely on the ground of various procedural defaults on the Appellant's part.[22] At the hearing, I made no order on this given that the parties were already before the court in respect of the substantive appeal.

46 However, given my finding above that the Appellant has no proper basis for this appeal, as I had telegraphed to the parties at the hearing, costs orders would be made against the Appellant.

Aedit Abdullah
Judge of the High Court

Liu Hern Kuan and Chen Rong (Insights Law LLC) for the appellant;
Li Yourui Charles and Chua Shu Yuan Delvin (Inland Revenue Authority of Singapore) for the respondent.

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21 HC/SUM 2250/2022.

22 RWS at paras 37–50.